

LAWS FOR ALBERTANS

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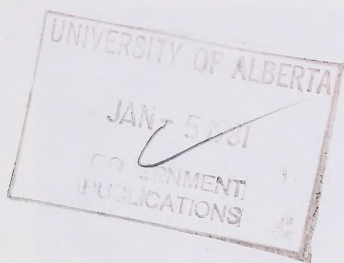


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A Message from the Director



LAWS FOR ALBERTANS

A Message from the Director

This is the third revision of **Laws for Albertans** since I assumed this position. The publication has undergone many changes in the last few years. A decade ago, it limited itself to "Laws of Interest to *Women of Alberta*" and, to bring the point home, the covers of earlier editions were pink!

October 18, 1979 marked the fiftieth anniversary of Canadian women being legally declared "persons", and because Alberta women have played a significant role in pioneering social progress, I thought it would be interesting to review some of the changes which have occurred over the last twelve years, in women's rights and in the social concerns that affect all of us.

A number of legislative changes demonstrate an evolving recognition of women's equal status. Prior to April 27, 1971, women had the right to refuse jury duty. A revision to *The Jury Act* effective that date requires women to accept jury duty as part of their responsibility as citizens. Similarly, both males and females in Alberta are now considered adults at age 16 and may be tried for criminal offences in adult court. Before October 1, 1978, female offenders were considered juveniles until age 18. *The Matrimonial Property Act*, effective January 1, 1979, provides for equal sharing, modified by judicial discretion, of property acquired by a couple during marriage. Previous matrimonial property law gave a spouse a right only to property to which s/he had made a financial contribution. The change in the law is of particular benefit to the woman whose marriage dissolves, and who had contributed her labour to a family business and/or had worked in the home as parent and homemaker. Before the change, many women in this position were only entitled to maintenance payments. Effective January 1, 1977, an amendment to *The Alberta Labour Act* provided for unpaid maternity leave of up to 18 weeks, to an employee who had been in the job with that employer for at least one year, permitting her to return to the same or comparable job, without loss of pay or benefits.

Recent changes in *The Landlord and Tenant Act*, effective July 1, 1979, represent an advance in the rights of renters. Notice of termination of tenancy by a landlord has been increased from 30 to 90 days. Increased attention to civil liberties is reflected in *The Individual's Rights Protection Act*, effective January 1, 1973, which established the Alberta Human Rights Commission to investigate instances of discrimination and unfair practice in such areas as tenancy, employment and public accommodation; and to promote ideas of equality among the general public.

Although brief, the above outline of legislative changes is ample evidence of the relative freedom we enjoy as citizens of Canada and as Albertans. I hope this expanded edition of **Laws for Albertans** will prove useful in helping to interpret these laws for you.



E. Phyllis Ellis

E. Phyllis Ellis, Director
Alberta Women's Bureau

Introduction

Basic to our own sense of self and the manner in which we fit into a family, community, province or country, is the need to be aware of the guidelines which govern our interaction with our fellow human beings. From the most primitive to the most sophisticated cultures there can be found prescriptions and proscriptions which define specifically how one must act and react in order to function in maximum harmony in a given society.

As societies become more complex, the "do's and don'ts" are set out in a written form which we have come to know as the law. The laws in our country are structured to allow a maximum amount of individual freedom. One of the first and most important things with which a responsible citizen must come to terms is the fact that individual freedom must be limited at that point where one person's freedom begins to violate or infringe upon the freedom of another person.

This publication is offered as a simplified explanation of the way various levels of government function, and the laws for which they are responsible. You are reminded that this booklet is intended to provide a very general introduction to a very complex system. It is not intended as a substitute for professional help when legal problems arise.

Copies of provincial statutes are available at a nominal fee from:

Alberta Government Services
Public Affairs Division
Print Procurement Services
204 J.J. Bowlen Building
620 Seventh Avenue S.W.
Calgary, Alberta
T2P 0Y8

Alberta Government Services
Public Affairs Division
Publications and Statutes Branch
11510 Kingsway Avenue
Edmonton, Alberta
T5G 2Y5

Telephone: 261-6251

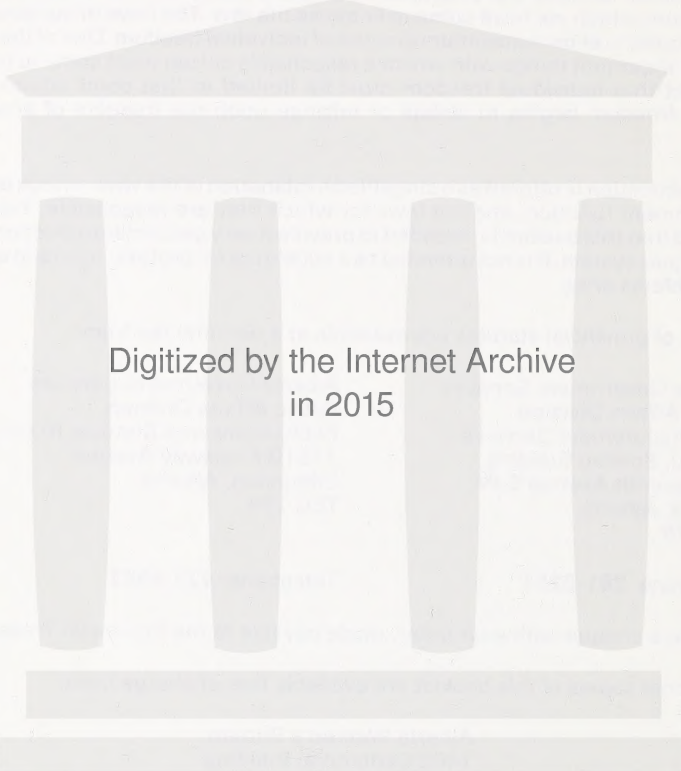
Telephone: 427-4952

Enclose a cheque with your order, made payable to the Provincial Treasurer.

Additional copies of this booklet are available free of charge from:

Alberta Women's Bureau
1402 Centennial Building
10015 - 103 Avenue
Edmonton, Alberta
T5J 0H1

Telephone: 427-2470



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Your Province — Your Law

THE PROVINCE of Alberta was established in 1905 by *The Alberta Act*, an act of the Parliament of Canada.

Power to change the law and make new laws is shared by the Parliament of Canada and the Alberta Legislature. This power is divided between the two governments by *The British North America Act* of 1867. Generally speaking, neither government can make laws concerning matters within the jurisdiction of the other.

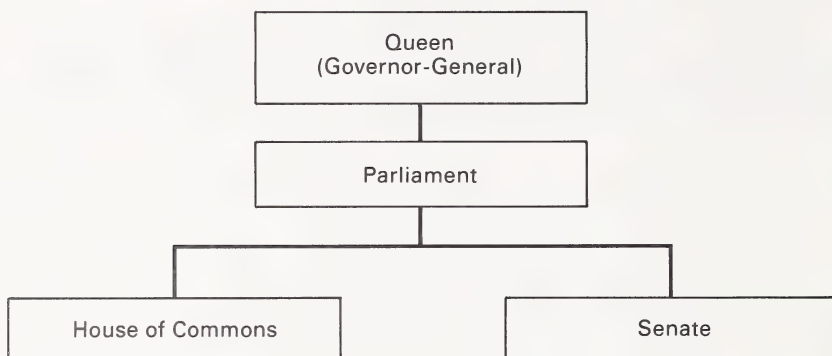
The province has the right to legislate on matters of a local nature, such as property and civil rights, municipal government, and marriage. Parliament has the right to make laws concerning crime, divorce, currency and banking, trade and commerce, and matters of country-wide importance.

Remember and appreciate the fact that the Parliament of Canada and the Alberta Legislature are in essence the voices of YOU, the citizen. The laws in reality reflect the sense of right and wrong, and the respect for justice and mercy as set out by YOUR elected representatives.

Levels of Government

FEDERAL GOVERNMENT

The official representative of the Queen (sometimes known as the Crown) is the Governor-General, who is appointed by the Queen, on the advice of the Canadian Prime Minister, for the term of five to seven years. The Governor-General has little actual power; tradition dictates that he follow the advice of the cabinet. Orders by the Governor-General-in-Council are in reality decisions formally reached by the cabinet. "Council", as used above, refers to the Privy Council, which is made up of all living members of cabinets past and present, and other distinguished persons. The present-day cabinet usually makes the decisions and then speaks on behalf of other members of the Privy Council.



The House of Commons is made up of elected members who represent the public. It decides on legislation, acts of Parliament, authorizes expenditures and levies taxes. The political party with the majority of members in the House of Commons is called the Government. The Opposition, or minority, has the job of questioning the Government, bringing out different ideas, and generally keeping the Government "on its toes".

Members of the Senate are appointed by the Governor-General-in-Council. To qualify for the appointment they must have property worth \$4,000.00, be over thirty and under seventy-six years of age. The Senate originates bills and reviews bills coming from the House of Commons.

The Executive Council is made up of the Prime Minister and his cabinet. This body formulates government policies. Each minister in the cabinet is usually responsible for one or more government departments, and represents these departments in the House of Commons. A cabinet minister who does not head a department is called a "Minister without Portfolio".

PASSING OF FEDERAL LEGISLATION

Before a federal bill becomes law, it must go through three readings in the House of Commons, receive three readings in the Senate and then go to the Governor-General for signature.

The first reading of a bill is in fact only an announcement, and the bill is made available to the members of Parliament for study. At the time of second reading the bill is debated in the House of Commons and then put to a vote. If the bill passes second reading it goes to committee for study in detail and for any necessary revisions. At the third reading the bill may be passed, defeated, sent to committee for further revision, or deferred to a later date.

FEDERAL ELECTIONS

The election date is fixed by the Governor-General-in-Council. The Governor-General then sends an order for the Chief Electoral Officer to proceed. Writs of election are then issued to the returning officers. The returning officer makes all arrangements for the election in his area and then posts notices of the election, indicating:

- (1) final date for nomination of candidates.
- (2) the date of balloting.

Enumeration of electors begins forty-nine days before the election. Two enumerators (one representing each of the two leading political parties) make a list of all voters. This list is publicly posted for voter inspection. Any errors or omissions are reported to and corrected before a revising officer (a judge or his appointee).

On election day, each poll is supervised by a deputy returning officer. Votes are also counted by the deputy returning officer. Ballots and lists are sent to the returning officers under lock and key.

VOTING IN FEDERAL ELECTIONS

You are eligible to vote in a federal election if you are a Canadian citizen who has attained the age of eighteen years on or before polling day.

Certain people are not permitted to vote, for example:

- (1) the chief electoral officer and his assistant
- (2) the returning officers
- (3) judges appointed by the Governor-General-in-Council
- (4) prison inmates
- (5) those committed to an institution because of mental illness
- (6) those disqualified from voting because of corrupt or illegal practices.

PROVINCIAL GOVERNMENT

In the provincial government, the Lieutenant-Governor is the official representative of the Queen, and is appointed for a five-year term by the Governor-General-in-Council. The Lieutenant-Governor acts on the advice of the provincial Executive Council. The premier is the head of the executive council, and the members are those members of the Legislative Assembly who are chosen by the premier to act as cabinet ministers.

The operation of a provincial legislature is somewhat similar to that of the federal government. However, there is only one house. In Alberta, at the present time, the legislature consists of 79 members, each one representing an Alberta constituency. The provincial legislature has jurisdiction over certain matters as education, property and civil rights, certain courts, jails, hospitals, and highways.

For ease of local administration, the rural area of the province is divided into counties, municipal districts, and improvement districts. Urban areas include cities, towns, villages and summer villages.

VOTING IN PROVINCIAL ELECTIONS

To be eligible to vote in a provincial election, you must:

- (1) be a Canadian citizen on the day the writ was issued
- (2) be at least eighteen years old on polling day
- (3) have lived in Alberta for at least six months prior to the day the writ was issued
- (4) be a resident in the electoral division and polling subdivision in which you vote.

In a provincial election, if your name does not appear on the official list of electors prior to election day, you may take an oath before the Deputy Returning Officer or a polling clerk, when you go to vote. Your name will then be entered in the poll book and you will be allowed to cast your ballot.

However, in a federal election, you must make sure that your name is on the official list of electors, if you live in an urban area. Otherwise you will not be allowed to vote. In a rural polling division, you may vote if your name is not on the list, provided you swear an oath at the poll and an elector whose name is on the official list accompanies you to the polling station and vouches for you.

MUNICIPAL ELECTIONS

Those eligible to vote in municipal elections are:

- (1) Canadian citizens or British subjects of the full age of eighteen years (on or before polling day), who have resided in Alberta for six consecutive months immediately preceding nomination day, and are resident in the municipality on nomination day, or
- (2) those whose names appear on the assessment roll because they are owners of land or a business liable to taxation.

The above are also eligible to vote on by-laws. (Laws created by a municipal council in a city or town are referred to as municipal laws and may be found in the by-laws of the city or town).

To be elected a mayor or a member of council, a person must be eligible to vote in the election and be able to speak, read and write English, have resided in Alberta for the twelve consecutive months preceding nomination day, and have resided in the municipality for the six months immediately preceding nomination day.

Courts

THE JUDICIARY

The laws are made and amended by the governing bodies, but are administered by the courts. Judges of federal courts and the superior courts of the provinces may hold office until they reach seventy-five years. Their tenure depends on good behavior and they may be removed from office by the Governor-General at the request of the Senate and the House of Commons. They are therefore ultimately responsible to Parliament, although they are not representative agents of the Government. (Section 99, B.N.A. Act). Besides being responsible for the administration of justice, the judiciary must interpret and advise the Governor-General or the Lieutenant-Governor-in-Council on matters of the Constitution. In the case of a dispute, the court makes the final decision.

Federal courts include the Supreme Court of Canada, the Federal or Exchequer Court, and other minor courts. Provincial courts include the Court of Queen's Bench and the Provincial courts.

JURY DUTY

In Alberta, juries consist of six persons in civil cases and twelve persons in criminal cases. Juries are seldom used in civil cases. To be eligible for jury duty, a person must be at least eighteen years of age and a Canadian citizen or a natural-born British subject.

Certain categories of people, such as firemen, policemen, doctors, clergymen, nurses, members of the armed forces, and many others, are exempt from jury service.

The Jury Act revision of August 1, 1921 made women eligible to serve on juries. However, women could not be compelled to serve as jurors and were given the right to refuse jury duty. Under a revision to *The Jury Act*, effective April 27, 1971, women were called to serve equally with men on Alberta juries.

LAWYER REFERRAL SERVICE

Lawyer Referral is a free service offered by the Law Society of Alberta. The system works like this:

- (1) A person who requires the services of a lawyer and is able to afford one, should contact Lawyer Referral Service at 1-800-332-1110 in Calgary (toll-free).
- (2) The caller will be asked to identify the kind of problem s/he has, i.e., wills, traffic offences, landlord/tenant disputes, etc.
- (3) The caller is given the names, addresses and telephone numbers of three local lawyers who prefer to practise in that particular area of law.
- (4) The caller should advise the lawyer that s/he has been referred by Lawyer Referral Service.

- (5) The lawyer chosen will provide a one-half hour consultation for a fee not exceeding \$10.00. If additional services are necessary, the fee is arranged between the client and the lawyer.

LEGAL AID SOCIETY OF ALBERTA

Legal aid is available in Alberta to persons who are unable to hire a lawyer because they do not have the money or cannot expect in the near future to have the money to do so. Eligibility for legal aid is dependent upon such circumstances as income, cash on hand, assets, ability to borrow, family responsibilities, etc. Upon application for legal aid, each applicant's financial situation is reviewed. If it is felt that legal fees would present a hardship, the application will be accepted.

Legal aid is not free. When a lawyer is engaged by the society on behalf of an applicant, the lawyer submits the bill to Legal Aid Society. Clients who are able to do so are expected to contribute in whole or in part to the cost of legal assistance supplied to them. Therefore, when applying for legal aid, you may be asked to sign a promissory note for a specific amount to be paid to the Legal Aid Society.

Criminal legal aid may be extended to persons in relation to:

- (1) criminal prosecutions of indictable offences
- (2) prosecutions of indictable offences under *The Narcotic Control Act* and *The Food and Drug Act*
- (3) prosecutions under *The Juvenile Delinquents Act*
- (4) applications for bail
- (5) appeals.

Civil legal aid may be extended to persons in relation to:

- (1) commencing legal proceedings
- (2) defending legal proceedings
- (3) being a party to legal proceedings.

If you wish legal aid assistance, contact the Legal Aid Society at:

401 Melton Building
10310 Jasper Avenue
Edmonton, Alberta
T5J 2N4

Telephone: 427-7575

100 Rocky Mountain Plaza
615 Macleod Trail South East
Calgary, Alberta
T2G 4T8

Telephone: 261-2260

or at the Court House in any of the following locations:

Drumheller
Fort Macleod
Grande Prairie
Hanna
Lethbridge

Medicine Hat
Peace River
Red Deer
Vegreville
Wetaskiwin

In addition, applications for legal aid assistance may be obtained from:

- (1) a Clerk of the Court in any court house in Alberta
- (2) any R.C.M.P. detachment or lockup in Alberta
- (3) any provincial mental hospital or other place of incarceration in Alberta
- (4) any law office in any city or town in Alberta where there is no court house.

WITNESSES

Many citizens have the experience of being called as witnesses in either a civil or criminal court proceeding. Witnesses required to give evidence may be notified informally or their presence in court may be compelled by either a subpoena or a notice to appear.

A subpoena is an order of the court commanding a witness to come to a specific court at a set time and place. Disobeying such an order is a criminal offence and a warrant may be issued for the arrest of the absentee witness.

A notice to appear is the usual method used in civil trials and should be accompanied by conduct money. This is a prescribed amount of money to which the witness is entitled for the time he spends in court and the expenses he incurs getting there.

On taking the stand, the witness is first sworn in. This may be done either by an oath taken on the Bible or by the witness affirming that s/he will tell the truth. The witnesses are obliged to answer all proper questions put to them and a failure to do so may result in a finding of contempt of court. Giving false evidence is considered perjury, a criminal offence for which the witness may be prosecuted.

The purpose of witnesses is to present evidence to a court or other judicial body, in order that the facts of the matter may be determined. Citizens should look on this as a public duty they must fulfil in the interests of furthering justice.

Further information as to the duties and obligations of a witness in court proceedings may be obtained by calling Communications (Public Affairs), Alberta Attorney General at 427-8530 in Edmonton.

For further information on courts, refer to **Courts in Alberta**, a publication issued by Alberta Attorney General.

Marriage and the Family

REGULATIONS GOVERNING MARRIAGE

Marriage licensing and regulations are determined by each province. In Alberta, you may marry if you meet certain requirements of age, understanding and status.

AGE

If you are eighteen years of age or older you may marry, provided you meet the other requirements. If you are sixteen or seventeen years of age, the consent of both parents (if living) or a court order dispensing with parental consent, is required. If your parents are separated or divorced (under a decree of judicial separation or a separation agreement), the consent may be given by the parent or other person who has legal custody of you. If you are a ward of the Crown, consent may be given by the Director of Child Welfare.

No person under the age of sixteen may marry, except for a female who is pregnant or the mother of a living child. In this instance, parental consent and a doctor's certificate are required.

MENTAL CAPACITY

Both parties must understand what the marriage contract means, as well as the duties and responsibilities relating to marriage.

INELIGIBILITY

A person who is already married may not marry, nor may a person marry someone who is closely related through blood or marriage, i.e. sister/brother, mother/father, daughter/son, etc.

LICENSE

Marriage licenses are issued by the Vital Statistics Division of Alberta Social Services and Community Health. Licenses are valid for three months after the issuing date. Divorced persons are required to produce papers regarding the final decree when applying for a marriage license.

BLOOD TESTS

Each applicant must have a blood test (unless over sixty years of age) within fourteen days prior to applying for the marriage license. It is not necessary to wait for the results of the blood test.

THE CEREMONY

A clergyman or marriage commissioner may perform the marriage only after receiving a valid license.

COMMON-LAW RELATIONSHIPS

Common-law relationships have no legal sanction in Alberta. Since they are not legally performed and registered marriages, they require no legal action to dissolve them. If the relationship should end, you may take with you only what is legally yours, and neither is entitled to maintenance from the other. If one of the partners in a common-law union should die, the other has no inheritance rights unless specifically named in the will. If children are born, they are illegitimate and their father will not be legally required to support them unless their mother goes through a paternity action on their behalf.

Children from a common-law union must ordinarily be registered with their mother's surname, unless their parents make a joint request to the Vital Statistics Division of Alberta Social Services and Community Health, in which the father signs an "Acknowledgement of Paternity".

Alberta Social Services and Community Health recognizes the common-law relationship for the purpose of assessing the amount of social assistance payable, in the same way as a legal marriage.

Also, there are now three laws which recognize the common-law relationships of Alberta residents:

- (1) **THE CANADA PENSION ACT** — a federal statute which, upon the death of a person who has made contributions under the Act, allows the common-law partner to claim certain death benefits and, in certain situations, a pension. Under the Act, a common-law partner will be treated as a spouse:
 - (a) where s/he has been maintained and publicly held out to be a spouse by the contributor for one year, if neither of the parties is legally married to another person
 - (b) where s/he has been maintained by and publicly represented as a spouse of the contributor for three years, if one of the common-law partners is legally married to another person.
- (2) **THE ALBERTA WORKERS' COMPENSATION ACT** — a provincial statute, which provides compensation to the surviving legal spouse of a worker, who dies as the result of an accident at work. However, where the deceased worker left no dependent legal spouse, the Workers' Compensation Board may exercise its discretion in making the compensation payable to the surviving common-law partner, who cohabited with the deceased worker for two years immediately preceding the death (where there are children of the union), or for five years if there are no children.
- (3) **THE INTESTATE SUCCESSION ACT** — a provincial statute, which gives inheritance rights to the illegitimate children of a deceased father, provided said father has left no widow or legitimate children. It is also necessary that the deceased has acknowledged the paternity, or has been declared to be the father by an Order of the Court.

THE MARRIED WOMEN'S ACT

Under the old law, a married woman was deemed to be so closely identified with her husband and so much under his control and influence that she could not

be held responsible personally for wrongs committed by her and she could not sue personally for wrongs committed against her. While she could own property in her own name, the power to dispose of it was in her husband's control. Generally speaking, an unmarried woman had the same rights and liabilities as a man; but when she married, the husband assumed both her rights and her liabilities.

Today, the married woman has the same rights and liabilities as the unmarried woman, and *The Married Women's Act* states that a married woman:

- (1) is capable of acquiring, holding and disposing of any property
- (2) is capable of suing and being made liable in respect of a tort, contract, debt or obligation
- (3) is capable, without her husband being joined as a party, of suing and being sued, either in contract, including a contract made between her and her husband, or in tort or otherwise
- (4) is subject to the law relating to bankruptcy and to the enforcement of judgments.

Spouses may not sue each other in tort with the exception that a married woman may sue her husband in tort in order to protect her separate property.

THE DOWER ACT

Dower rights are those rights given by *The Dower Act* to the spouse of a married person regarding the homestead and personal property of the married person.

The homestead is the parcel of land on which a dwelling occupied by the owner as a residence is situated. In a city, town or village, it may consist of not more than four adjoining lots; outside of a city, town or village, the homestead may consist of not more than a quarter section of land.

Essentially, *The Dower Act* prohibits a married person from selling, giving, or willing away the homestead without the consent of his or her spouse. An order by a judge may be obtained, dispensing with the consent of the spouse to the disposition of the homestead by a married person when:

- (1) the married person and the spouse are living apart
- (2) the whereabouts of the spouse is unknown
- (3) the spouse is mentally incompetent or of unsound mind
- (4) the married person has two or more homesteads
- (5) the spouse has not lived in the province since the marriage
- (6) the spouse has executed an agreement in writing for valuable consideration and in accordance with *The Dower Act* to release the claim of the spouse to dower.

In order for one spouse to dispose of a homestead, the consent of the other spouse is required, plus an acknowledgement taken separate and apart from the lawyer or spouse who were parties to the original sale. This acknowledgement is

evidence that the consent was freely and voluntarily given with knowledge of the rights involved.

A judge may by order dispense with the consent of the spouse if, in the opinion of the judge, it appears fair and reasonable under the circumstances to do so.

If a married person disposes of the homestead without the spouse's consent or an order by a judge dispensing with the spouse's consent, the married person is liable to the spouse for half the value or half the selling price of the property, whichever is greater.

In the event of death of one spouse, the other spouse is entitled to the use of the homestead for the remainder of his or her life.

RIGHT OF WIFE TO PLEDGE HUSBAND'S CREDIT

If a wife is living with her husband she has an implied power to pledge (promise) his credit for things that are necessary for herself or the household. The amount that can be pledged varies with the couple's living standard.

The right to pledge credit exists unless the husband can show that the wife does not have his permission. He may do this by showing that:

- (1) he has told tradespeople not to give her credit
- (2) he has forbidden her to pledge his credit
- (3) she is given a substantial allowance on the understanding that she will not pledge his credit.

If a wife has been deserted by her husband or if she has had to leave him for a good reason (such as cruelty), she becomes what is known as an "agent of necessity". This means that she may pledge his credit for necessities unless he is giving her an allowance. The husband cannot end this by forbidding her to pledge his credit or by telling tradespeople not to give her credit. Credit may be terminated by misconduct on the wife's part.

If a wife has left her husband without good reason, she is not allowed to pledge her husband's credit.

THE FAMILY RELIEF ACT

It is possible that a deceased person's family may not be adequately provided for in the will or under *The Intestate Succession Act* (if there is no will). In these cases, courts have the power to see that adequate provision for maintenance and support is made from the estate of the deceased. Dependents include:

- (1) the spouse
- (2) children under eighteen years. In addition to legitimate children born prior to the deceased person's death, the act includes:
 - (a) a child of the deceased born after the death of the deceased

- (b) an illegitimate child whose deceased father has acknowledged the paternity of the child, or has been declared to be the father of the child by order of *The Maintenance and Recovery Act* or any prior acts providing for affiliation or paternity, or an illegitimate child of a deceased woman
- (c) children over eighteen years who are unable to support themselves because of mental or physical disability.

No application for assistance under *The Family Relief Act* can be made to the court after six months from the grant of probate of the will or of letters of administration, unless the judge, if he thinks it is just, allows an application to be made after that time.

PRESUMPTION OF DEATH

An order may be obtained that presumes a spouse to be dead if:

- (1) the spouse has been continually absent for seven years
- (2) no evidence can be found showing that the spouse is alive.

However, if you do not know the whereabouts of your spouse, or if you have been unable to locate your spouse for three years, and you do not know whether your spouse is dead or alive, you may obtain a divorce. If you remarry after obtaining a divorce for any of these reasons, your second marriage will remain legally valid even if your first spouse should reappear.

JUDICIAL SEPARATION

A husband or wife may petition for a decree of judicial separation on the grounds of adultery, cruelty, desertion for two years or more without reasonable cause, or failure to comply with an order for restitution of conjugal rights. Sodomy or bestiality or an attempt to commit either of these acts is also grounds for judicial separation. "Cruelty" includes any conduct which endangers life, limb or health, or which is grossly insulting and intolerable, or of such a character that the person seeking the separation could not reasonably be expected to willingly live with the other after s/he has been guilty of such conduct.

ALIMONY AND MAINTENANCE

When entitled to maintain an action for judicial separation a person may, with that action or separately, sue for alimony. There are two types of alimony orders which can be made:

- (1) interim orders which provide for the plaintiff during the period of time between the commencement of the action and the court order of judicial separation. An interim order will not be made if the plaintiff has, from any source whatsoever, sufficient means of support independent of the defendant.
- (2) orders for payment of alimony after judicial separation has been granted. As long as the defendant pays the sum ordered, no matter how small, he is not liable for necessities supplied to the plaintiff. A change in the order may be made upon a change in the circumstances of the parties. The foregoing actions are conducted in the Court of Queen's Bench.

PROTECTION ORDERS

An alternative procedure is provided whereby a married person may apply to a magistrate, who may make an order requiring the spouse to pay for the maintenance of the applicant and family. A married person is deemed to have been deserted within the meaning of this part when one spouse has been deserted by the other or is living apart from the spouse, because of cruelty or because of refusal or neglect of the spouse without sufficient cause, to supply food or other necessities when able to do so.

If the magistrate decides that the applicant was not deserted by the spouse and is not entitled to aid, the magistrate may make an order restricted to the maintenance of the children. A divorced person may also apply under this procedure for an order for maintenance restricted to the children (that is, the legitimate children of the marriage).

DIVORCE

Divorce actions are conducted in the Court of Queen's Bench according to *The Divorce Act*, which is a federal statute applicable to all provinces of Canada. Prior to the 1968 Divorce Act, a divorce could be granted only on grounds of adultery. However, under the new act the following grounds were added:

- (1) sodomy, bestiality or rape
- (2) form of marriage with another person
- (3) physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

In addition to the above, an action for divorce may be presented to the court by the husband or the wife where they are living separate and apart, on the grounds that there has been a permanent breakdown of their marriage by reason of one or more of the following circumstances:

- (1) the respondent has been imprisoned for a period of not less than three years during the five-year period immediately preceding the presentation of the petition for divorce, or has been imprisoned for a period of not less than two years immediately preceding the presentation of the petition, for an offence of which the sentence is for a term of ten years or more
- (2) the respondent, for a period of not less than three years immediately preceding the presentation of the petition, has been grossly addicted to alcohol or narcotics, and there is no reasonable expectation of the respondent's rehabilitation within a reasonable foreseeable period
- (3) the marriage has not been consummated and the respondent, for a period of not less than one year, has been unable by reason of illness or disability to consummate the marriage or has refused to consummate it
- (4) the petitioner, for a period of not less than three years immediately preceding the presentation of the petition, has had no knowledge of or information as to the whereabouts of the respondent and, throughout that period, has been unable to locate the respondent
- (5) the spouses have been living separate and apart for other reasons for a period of not less than three years or by reason of the petitioner's desertion of

the respondent for a period of not less than five years immediately preceding the presentation of the petition.

Where marriage breakdown is listed as grounds for divorce, the court must be satisfied that no possibility exists for reconciliation of the husband and wife. Upon being satisfied that it is proper cause for divorce, the court grants a *decree nisi*. At this time the court may also decide on such matters as custody of the children, alimony and maintenance, and the division of matrimonial property. There is then a waiting period of three months, after which, if no reason is shown why it should not, the court grants a *decree absolute*. This waiting period may be abridged if the court is of the opinion that, because of special circumstances, it would be in the public interest to do so and if both parties agree and undertake that no appeal will be made. It is only after the issuance of the *decree absolute*, that the parties are free to marry again.

The 1968 Divorce Act provides that the person who commences the action for divorce must be domiciled in Canada. The action must be commenced in the province where one of the parties has been ordinarily resident for a period of one year immediately preceding the presentation of the petition for divorce, and has actually resided there for at least ten months of that period.

THE MATRIMONIAL PROPERTY ACT

As of January 1, 1979, either spouse may apply for a matrimonial property order under *The Matrimonial Property Act*. This would be appropriate in instances where there is disagreement between the spouses as to how their property should be divided and their marriage has ended through divorce, annulment, judicial separation or separation for one year (or less, if, in the court's opinion, there is no possibility of reconciliation). This Act does not apply if the spouses have entered into a written contract. It also does not apply to common-law relationships. Application for an order may be commenced at or after the date proceedings are begun for a decree of divorce, declaration of nullity or judgment of judicial separation. Application should be made within two years of marriage breakdown.

The Act provides that all property acquired during a marriage should be shared equally. Exceptions to this "equal sharing" ruling are to be decided by the judge who, under this Act, must take a number of different factors into account before making a decision. Some of these factors include:

- (1) spouse's contributions to marriage and family welfare including any contribution made as a homemaker or a parent
- (2) direct or indirect financial or other contributions to acquiring, conserving, improving, operating or managing businesses, farms or other enterprises
- (3) spouse's roles in acquiring, conserving or improving property
- (4) incomes, earning capacity, liabilities, obligations and additional property or financial resources, at both the time of marriage and break-up
- (5) how long marriages last, the terms of any oral or written agreements between the spouses, gifts, previous property distributions, prior court orders and tax liabilities
- (6) any other fact or circumstance the judge considers relevant.

The court also has the power to decide which spouse shall be given use of the home and household goods, and can issue an order to evict or restrain a spouse from entering the matrimonial home. This decision would depend on the personal and financial circumstances of the people involved.

The rights given under *The Matrimonial Property Act* are in addition to, and not a substitute for, the rights given to a spouse under *The Dower Act*. It also does not affect the rights of a spouse to make an application under *The Family Relief Act*.

For further information on this act, you may obtain a free copy of the pamphlet *Alberta's Matrimonial Property Law* from Alberta Women's Bureau or Alberta Attorney General.

CHILD'S LAWYER (AMICUS CURIAE)

An *amicus curiae* is a person, usually a lawyer, who has been appointed by the court to provide information on some fact or principle of law which has been overlooked. The most common circumstance where an *amicus curiae* is used today is in the matter of child custody. He is there to see that the best interests of the child are considered but he does not represent the child the way a lawyer usually represents a client.

Where parents are pursuing a divorce action or legal separation, the court will appoint someone independent of these two parties *amicus curiae*. After assessing the family's circumstances the *amicus curiae* will prepare a custody report. The court then uses the report to decide who, in the best interests of the child, should have custody.

THE ALIMONY ORDERS ENFORCEMENT ACT

This act provides a means for enforcement of alimony and maintenance orders. The person against whom the order is made may be called before a judge and examined as to means and ability to comply with the order. A person may be imprisoned for a period of up to one year if that person:

- (1) fails to appear for the examination
- (2) fails to give satisfactory answers to the questions asked
- (3) has disposed of any property with the intent of avoiding compliance with the order, or
- (4) has refused to comply with the order when he has sufficient means or ability to do so.

THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

In most cases where an alimony or maintenance order is made, both the husband and wife reside in Alberta. There are cases where the defendant has left the province and is therefore outside the jurisdiction of the Alberta courts. Even though the plaintiff has obtained an alimony or maintenance order in Alberta, it is of no effect in the province or country where the defendant resides. It is therefore necessary for the plaintiff to take proceedings for an order against the defendant in the province or country where the defendant resides. The same

is true where the plaintiff is in another province and the defendant has come to Alberta.

The Reciprocal Enforcement of Maintenance Orders Act is designed to meet this problem. Under this act, arrangements are made with other provinces and countries (called reciprocating states) whereby alimony and maintenance orders made by Alberta courts may be registered with the courts of the reciprocating states. In return, the orders of the courts of the reciprocating states can be registered in Alberta courts. The registered order can then be enforced as if it were an order of the court where it was originally registered.

In addition, the court has jurisdiction to order a provisional maintenance against a spouse, in the case of the spouse leaving the province before a final maintenance order can be made. This provisional order can be registered in the province where the spouse resides, for confirmation and enforcement purposes. Similarly, a provisional maintenance order made in another province will be heard by a court in this province and if the judge (upon hearing the spouse's evidence) decides that the provisional order should be confirmed, the order will be confirmed with or without variation.

THE EXTRA-PROVINCIAL ENFORCEMENT OF CUSTODY ORDERS ACT

The Extra-Provincial Enforcement Of Custody Orders Act took effect on May 18, 1977, empowering the court to enforce or vary custody orders made in other jurisdictions. This Act allows parents to enforce legal claim to their children, granted in another jurisdiction, without the need for another custody suit.

Alberta courts can vary custody orders, giving first consideration to the welfare of the child, regardless of the wishes or interests of any person seeking or opposing the variation. The court will treat the question of custody as being of first importance, and the question of access or visitation as being of secondary importance.

FAMILY COURT

The Family Court of Alberta was created by a provincial statute to deal with social-legal problems arising within the family. The aim of the court is to preserve the original family unit whenever possible, or to create as wholesome a family atmosphere as possible in what remains of the original family unit. Courts are located in major centers (Edmonton, Calgary, Lethbridge, Red Deer), but there are also circuit courts in centers all over the province. The Family Court tries to make itself as available as possible to those who are in need of its services. The court provides a counselling service to families with difficulties; if no mutual agreement can be reached, rulings are made by the court.

The Family Court has jurisdiction over both criminal and civil matters, which include:

Non-support	<i>Criminal Code</i> <i>Domestic Relations Act</i>
Family assault	<i>Criminal Code</i>
Threats or fear of personal injury	<i>Criminal Code</i>

Interdiction	<i>Liquor Control Act</i>
Maintenance enforcement	<i>Family Court Act</i> <i>Reciprocal Enforcement of</i> <i>Maintenance Orders Act</i>
Custody/access	<i>Family Court Act</i>
Committal of family member	<i>Mental Health Act</i>
Charges against adults under:	<i>School Act</i>
Charges against adults, including neglected children, supervision orders, temporary wardship, under:	<i>Child Welfare Act</i>

To locate the nearest Family Court, consult your telephone directory under Family Court or Juvenile and Family Courts, or contact the nearest Alberta Government R.I.T.E. (Regional Information Telephone Enquiry) operator. For further information you may obtain a free copy of the publication *Edmonton Family Court* from Alberta Attorney General.

CHILD ADOPTION

An adult person, whether single or married, may adopt a child. Alberta Social Services and Community Health tries to place all children who are permanent wards of the Crown into adoptive homes, and persons who wish to adopt may apply to have one of these children placed with them, with a view to adoption. Children who are not wards may be adopted by persons who already have such children in their care, as for example, when a child is placed privately for adoption by its parents, or when a new partner wishes to become the 'legal parent' of his or her spouse's children of a previous marriage. Such adoptions require the approval of the Director of Child Welfare and should be commenced, like those for wards, by application to Alberta Social Services and Community Health. If the department, after investigating, finds the adoptive parents are fit and proper persons and will provide a good home for the child, they will present the adoption petition to a judge of the Court of Queen's Bench for granting of the order. This order gives adoptive parents and children the same rights and obligations enjoyed by parents and their biological children.

THE CHILD WELFARE ACT

The Child Welfare Act provides for the protection of unmarried persons under eighteen years of age whose well-being (physical, educational, social or moral) is endangered because of the failure, unfitness or inability of their parents or guardians.

In this province, Alberta Social Services and Community Health administers child welfare services. It has established a registry for the purpose of recording reports of abandonment, desertion and physical ill-treatment of children. Anyone suspecting child abuse has a duty to report it to their Regional Office of the department or by dialing 0 and asking for the toll free Zenith 22024. Edmonton residents may telephone 424-3106.

When a child welfare worker finds a child neglected, the matter is thoroughly investigated and a report submitted to a Juvenile Court judge. The judge may return the child to the parents, adjourn the case under the supervision of a child welfare worker, or make the child a temporary ward of the Crown. If a child remains a temporary ward, and it is not possible for the child welfare worker to help the parents provide a suitable home, or if it is felt that the parents will never be able to care for the child properly, then a judge in the Court of Queen's Bench will consider an application for permanent wardship.

A parent or guardian who is unable to look after a child because of illness or other misfortune, can enter into an agreement with the Director of Child Welfare to place the child in the custody or under the supervision of the director for a temporary period of time, so that adequate provision can be made for the care of the child.

ILLEGITIMACY

A child is considered to be illegitimate if born out of wedlock. If the parents of a child born out of wedlock subsequently marry, the child is considered to be legitimate from birth.

The father of a child born out of wedlock may be held responsible for the care (medical and other) of the mother for three months before the birth, and for as long as necessary after the birth of the child. He may also be required to pay a periodic sum towards the maintenance and education of the child until the child reaches sixteen years of age (or eighteen years if attending school), or longer if the child is mentally or physically incapable of self-support.

The mother or guardian of a child born out of wedlock, or the Director or Maintenance and Recovery, Alberta Social Services and Community Health, may lay a complaint within twenty-four months of the child's birth, against the man alleged to be the father. Upon presentation of sufficient evidence, a paternity order will be issued stating the amount to be paid by the father.

THE AGE OF MAJORITY ACT

Minors have almost no legal rights; they are under their parents' care, but are protected against abuses by their parents.

The civil age of majority, for both sexes, is eighteen, as provided in *The Age of Majority Act*. This means that anyone eighteen or over, subject to other qualification restrictions, may vote in federal, provincial and municipal elections; mortgage or lease property; marry; and serve on a jury. In other words, being eighteen means that a person has all the civil rights and responsibilities of an adult.

Under the criminal law as applied in Alberta, both males and females are considered to be minors until they are sixteen. Criminal prosecution of minors usually takes place in Juvenile Court under *The Juvenile Delinquents Act*, but can be waived to adult court if the offence is indictable and is very serious.

THE JUVENILE DELINQUENTS ACT

Under *The Juvenile Delinquents Act*, a federal statute, young lawbreakers may be treated as delinquents in need of help, guidance and supervision. In

Alberta, a juvenile delinquent is a boy or girl under sixteen years of age (the age varies from province to province), who violates any provision of the *Criminal Code* or any other federal or provincial statute, or who is guilty of sexual immorality or any similar form of vice.

A child who is or appears to be under twelve years of age may not be charged unless the permission of a judge is obtained. If a juvenile is charged with an offence, the parents are notified of the charge and the offender must be brought before a judge as soon as possible. The trial may be held without publicity and in a manner that is more informal than the usual court procedure. *The Child Welfare Act* provides that any child judged to be a juvenile delinquent and in need of care, is committed to the care and custody of the Director of Child Welfare as a temporary ward of the Crown.

It is an offence for any person to cause, aid, or contribute to the delinquency of a juvenile.

Health and Social Services

ALBERTA HEALTH CARE INSURANCE PLAN

All residents of Alberta are covered by Alberta Health Care Insurance, except those who complete the appropriate "opting-out" forms. If you opt out, you are responsible for all your medical and hospital bills. You should, therefore, give careful consideration to the cost of both medical and hospital care before deciding against Alberta Health Care Insurance coverage.

To qualify as a dependent under a parent's contract, a person must be:

- (1) single, under eighteen, and completely dependent on the parent, or
- (2) single, over eighteen, and financially dependent because of infirmity (either mental or physical), or
- (3) single, under twenty-five and a full-time student at an accredited educational institution.

Subsidized rates are available for residents on limited yearly incomes. For information regarding subsidy or any other aspect of this health care plan contact the Alberta Health Care Insurance Commission at:

118 Avenue and Groat Road
Box 1360
Edmonton, Alberta
T5J 2N3
Telephone: 453-4110

J.J. Bowlen Building
620 Seventh Avenue S.W.
Calgary, Alberta
T2P 0Y8
Telephone: 261-6411

A married woman may have her Alberta Health Care Insurance card issued in her maiden name, if she so chooses. However, she would continue to be included under the same policy as her husband.

Senior citizens are exempt from Alberta Health Care Insurance premiums, but continue to receive coverage.

THE MENTAL HEALTH ACT

If a doctor examines a person and thinks that person is suffering from a mental disorder and is in a condition that presents a danger to himself or to others, he may (within seventy-two hours of the examination) issue a conveyancy and examination order which gives the authority for anyone to have the person taken into an approved hospital within seventy-two hours of being issued.

The order also gives authority for two doctors to separately examine and detain the person for twenty-four hours. Orders may also be issued by a judge or, if it is thought to be necessary, a police officer may convey a person to a hospital. Unless two admission certificates are issued in the twenty-four hours, the person must be released. Two admission certificates must be signed by two doctors if they are of the opinion that treatment is necessary. These certificates give the authority to detain the person as a formal patient for up to one month. Renewal certificates are needed if the patient is to be detained for a longer period.

Also, any person may bring an Information before a Provincial Judge stating that a person is suffering from a mental disorder and is in a condition that presents a danger to himself or to others. If the Judge is satisfied that it is in the best interests of all concerned that the person be examined and that examination cannot be arranged in any other way, he may issue a warrant to apprehend that person for an examination.

CERTIFICATE OF INCAPACITY

Certificates of incapacity may be issued if the two physicians have determined that the patient is incapable of managing his/her own affairs. This certificate is valid until it is cancelled by an appeal panel or by an order of the Court of Queen's Bench, or by a trusteeship order made by the Court.

As a patient you have the following rights:

- (1) to know why you are being detained
- (2) to know how long you are to be detained
- (3) to know the name, address and function of the appropriate review panel
- (4) to appeal certificates and renewals
- (5) to have a suitable interpreter if there are language difficulties
- (6) to receive or send written communication without it being opened or withheld
- (7) to have visitors during visiting hours.

SEX CHANGES

The Vital Statistics Act was amended in 1973 to cover sex changes and their subsequent registration.

A person who has undergone a sex change may apply to have his/her registration changed. This enables the person to obtain birth and marriage certificates indicating the new sex. To obtain the revised registration, the person involved must furnish proof of identification and medical certificates from two qualified medical doctors confirming the change.

THE HUMAN TISSUE GIFT ACT — 1973

Any person who is eighteen years of age or older, is mentally competent and is making a free and knowledgeable decision, may consent (in writing) to have a specified tissue removed from his body and transplanted into another living person. This consent is void if the tissue is not removed for that purpose and at the time originally indicated in writing.

Any person who is eighteen years of age or older may consent to the use of his/her body for medical or scientific purposes after death. This consent may be in writing or spoken in the presence of two witnesses during the last illness.

The closest living adult relative may consent to a person's body being used for medical or scientific purposes unless s/he believes it may have been against the wishes of the deceased.

The fact of a donor's death shall be established by two physicians who have nothing to do with the person receiving the tissue and/or with the transplant operation.

You may obtain a Universal Donor Card at any branch of Alberta Motor Vehicles or at any medical centre (hospital, clinic, doctor's office, etc.). It is a form which you fill out and sign, specifying in what manner you wish to contribute a part or parts of your body to medical science. This form is attached to your driver's license for immediate reference after death.

THE VENEREAL DISEASES PREVENTION ACT

This act states that anyone who either knows s/he is, or thinks, s/he may be infected with venereal disease, should consult a physician or go to a provincial clinic. A physician or other person in an official capacity to know of venereal disease must report the case to the Director of Social Hygiene, Alberta Social Services and Community Health. If a person is infected, treatment will be ordered and must be taken. The treatment is paid for by the provincial government. Anyone refusing treatment for venereal disease may be detained until s/he is cured, and may be fined up to \$200 or imprisoned for up to 90 days.

THE EMERGENCY MEDICAL AID ACT

A doctor, nurse or other person who renders first aid to a person who is ill, injured or unconscious at the scene of an accident, cannot be held liable for damages, for injuries, or for the death of the person, unless the injury or death was caused by gross negligence.

WHERE TO FIND HELP

In trying to obtain help with a problem or in registering a complaint, a person is faced with a multitude of federal, provincial and municipal departments and agencies. Some of the larger centers have Advice, Information and Direction (A.I.D.) centers. The staff there will give you advice on who to contact and where. They may also distribute directories which list the agencies in the area. If there is no A.I.D. center in your area, contact the nearest Preventive Social Services office. Most municipalities have a Preventive Social Services office or employee who can assist you.

A.I.D. centers can be found in the following locations:

Calgary	Lethbridge (Information Lethbridge)
Edmonton	Lloydminster
Fort McMurray	Medicine Hat (Volunteer Services Bureau)

If you require assistance in contacting an Alberta government department or agency, contact the nearest R.I.T.E. (Regional Information Telephone Enquiry) operator. The operator will direct your call to a local government department or transfer your call to a major government center, where your problem or enquiry can be dealt with. This is done at no charge to the citizen. This system is available

to all Alberta citizens, but not to private businesses, municipal governments, school boards, or the federal government.

PREVENTIVE SOCIAL SERVICES

In Alberta, the municipal and provincial governments are cooperating in bringing together a program designed to prevent social problems and to enrich the quality of life. Some of the programs offered are: volunteer bureaus, day care centers, help with budgeting, child care and home management, family planning clinics, services for senior citizens, and preventive counselling for families, parents and young people.

Anyone wishing help in any of these areas should contact Preventive Social Services offices located in:

Calgary
Edmonton
Grande Prairie
Lethbridge

Medicine Hat
Peace River
Red Deer

Human Rights

In Alberta, two statutes protecting human rights are *The Alberta Bill of Rights* and *The Individual's Rights Protection Act*.

THE ALBERTA BILL OF RIGHTS

The Alberta Bill of Rights states that any individual has the right to personal liberty, security and the enjoyment of property. Individuals have the right not to be deprived of these except through the proper legal process. Each individual is entitled to the protection of the law and is equal with others before the law. The freedoms of religion, speech, meetings and the freedom of the press, have been reaffirmed. These rights and freedoms are to exist without discrimination because of race, national origin, colour, religion or sex.

THE INDIVIDUAL'S RIGHTS PROTECTION ACT

The Individual's Rights Protection Act protects individuals or groups against discrimination and unfair practices. A short summary follows.

CONDUCT

No one shall publish or display literature or symbols that indicate discrimination against a person or group of people because of race, religion, colour, sex, age, ancestry or place of origin. This does not mean that facilities usually used by one sex, such as washrooms, cannot be identified.

ACCOMMODATION

Accommodation or services that are usually opened to the public shall not be denied to anyone because of race, religion, colour, sex, ancestry, or place of origin.

TENANCY

No one shall refuse any person the right to occupy, as a tenant, a commercial or self-contained dwelling unit that is advertised or otherwise represented as being available for occupancy by a tenant, because of race, religion, colour, sex, ancestry or place of origin. Nor shall anyone be discriminated against in regard to the terms or conditions of the occupancy because of race, religion, colour, sex, ancestry or place of origin.

PAY

Employers shall not employ any person at a rate of pay which is less than the rate of which any other employee is paid for similar or substantially similar work. Work is considered similar if duties performed are basically the same. This law is not broken if the difference in pay is due to a reasonable factor other than sex, and if the difference would normally have existed. An example of this is seniority in the number of years worked.

An employee who has been paid less than the rate of pay to which he is entitled may make a complaint to the Human Rights Commission OR take action against the employer for recovery of the difference in pay.

EMPLOYMENT

No employer shall refuse to employ or refuse to continue to employ any person, or discriminate against any person with regard to employment or any term or condition of employment, because of the person's race, religion, colour, sex, marital status, age, ancestry or place of origin.

No person shall circulate any form of application for employment or publish any advertisement in connection with employment or make any written or oral inquiry of an applicant which expresses any limitation, specification or preference as to race, religion, colour, ancestry or place of origin.

Neither of the above provisions apply to a domestic employee in a private home or to a farm employee who resides in the employer's private home.

No trade union, employer's organization or occupational association shall exclude any person from membership, expel or suspend any member, or discriminate against any person because of race, religion, colour, ancestry or place of origin.

PROTECTION

No person shall be evicted, discharged, suspended, expelled, intimidated, coerced, discriminated against, or have penalties imposed because s/he has complained, started or assisted in the prosecution of a complaint under this act.

ALBERTA HUMAN RIGHTS COMMISSION

The Individual's Rights Protection Act established the Alberta Human Rights Commission, which has the job of educating the public and promoting ideas of equality of all people. The Commission has powers of investigation and is responsible for the enforcement of this Act. Decisions that have been made by the Commission can be appealed to the Court of Queen's Bench.

The Alberta Human Rights Commission is located at:

501 Edwards Professional Building
10053 - 111 Street
Edmonton, Alberta
T5K 2H8
Telephone: 427-7661

PENALTIES

Penalties for contravening *The Individual's Rights Protection Act* are intended to place the person discriminated against in the position he would have been had the unfair practice not occurred. Penalties might include issuing an order to the person/organization against whom the finding was made to do any or all of the following:

- (1) to cease the contravention complained of
- (2) to refrain in future from committing the same or any similar contravention

- (3) to make available to the person discriminated against the rights, opportunities or privileges s/he was denied contrary to this Act.
- (4) to compensate the person discriminated against for all or any part of any wages or income lost or expenses incurred by reason of the discriminatory action
- (5) to pay to the Crown a penalty of
 - (i) not more than \$200, in the case of an individual
 - (ii) not more than \$1,000, in the case of a corporation, trade union, employers' organization, employment agency or occupational association.

The order may be enforced in the same manner as any other order of the Court of Queen's Bench.

The Citizenship Act

The Citizenship Act became effective February 15, 1977. In general, you are a Canadian citizen if:

- (1) you were born in Canada
- (2) you were born outside of Canada after the present Citizenship Act came into force and at the time of your birth one of your parents, other than a parent who adopted you, was a citizen
- (3) you were born outside of Canada and became a Canadian citizen under the present act or former legislation.

An alien cannot acquire citizenship by marrying a Canadian citizen, nor can a Canadian citizen lose Canadian citizenship by marrying an alien. This could have occurred under legislation prior to January 1, 1947.

An adult must apply for citizenship on his/her own behalf. A child's guardian may make application for citizenship on behalf of the child. A child of 14 years or over must appear with the adult who is making application for citizenship on the child's behalf, to countersign the application. That child will also be required to take the citizenship oath.

To be granted Canadian citizenship, you must:

- (1) be 18 years of age or older
- (2) have been lawfully admitted to Canada for permanent residence and have lived in Canada for three of the four years immediately preceding your application for citizenship. Only the four-year period immediately prior to applying for citizenship may be considered. The period of residence is calculated as follows:
 - (i) one half-day for each day of residence in Canada before the date of becoming a Landed Immigrant
 - (ii) one day for each day of residence in Canada after the date of becoming a Landed Immigrant.
- (3) have an adequate knowledge of English or French, the official languages of Canada
- (4) have some knowledge of Canada and of your rights and duties as a Canadian citizen. (It is sufficient to have a general knowledge of the political system, the geography and the history of Canada.)
- (5) not be under a deportation order
- (6) take the Oath of Affirmation of Citizenship.

Special Citizenship Courts are located in Edmonton and Calgary. Canadians may file applications for proof of citizenship with their nearest court or with the Registrar of Canadian Citizenship, Department of the Secretary of State, Ottawa, Ontario K1A 0M5. A certificate will be forwarded to the applicant. Aliens and British subjects must file their applications with a court. Applications of all ethnic origins will be treated equally.

Use of Names

A person may use any name s/he wishes to use as long as it is not done for the purpose of fraud. In order to legally change a name, regulations contained in *The Change of Name Act* must be carefully followed.

Upon marriage, a woman is not obliged to take her husband's surname. This practice has been followed almost as though it were required by law, but it is in fact only a matter of cultural and social custom. After her marriage, a woman may continue to use her maiden name as before. Her children cannot be registered in her name. They must be registered under her husband's name, or under a hyphenation of both parents' names. The order in which the combined names appear is optional.

A woman who has adopted the custom of using her husband's surname may revert to her maiden name without going through the change of name procedure. In the case of a divorced woman reverting to her maiden name, her children will retain the name under which they were registered.

The child of an unmarried woman must be registered under the name of the mother, or, upon a joint request by both parents, under the name of the person acknowledging himself to be the father, or a hyphenation of both.

THE CHANGE OF NAME ACT

Subject to *The Change of Name Act*, any person may apply to change a given name or surname through the Director of Vital Statistics, Alberta Social Services and Community Health.

An application for a change of name may be made only by a person who is eighteen years of age or older and who is a resident of Alberta. A person may not apply to change the name of a child who is twelve years of age or older without the child's consent.

A married person who applies for a change of surname shall also apply for a like change of the surname of his/her spouse and each of their children. A married person may not apply to change the name of the spouse or their children without the spouse's consent.

A widowed mother who has remarried requires the consent of her present husband, to make application to change the surname of her child/ren (also the child/ren of her deceased spouse) to his.

A woman whose marriage has been dissolved and who remarries may apply to change the surname of a child of the dissolved marriage of whom she has lawful custody, to the surname of her husband. The consent of her husband, as well as that of her former husband, is required.

A person whose marriage has dissolved and who has lawful custody of a child from that marriage may, with the consent of the other parent of the child, if living, apply to change a given name or surname of the child to the applicant's surname

or, if the applicant is also applying for a change of surname, to the proposed name.

People living together in a common-law relationship may not apply to have the same surname.

Wills and Estates

MAKING A WILL

A will should be made in contemplation of life. When set up properly, it is the key to true enjoyment of your property while you are alive, as it only takes effect upon your death. Property devolves (passes) on death in many ways: joint tenancy, contract (life insurance), deed, gift, *The Intestate Succession Act*, *The Dower Act*, and by will. Either your will or *The Intestate Succession Act* will decide how your property will devolve other than by the aforementioned methods.

WHY HAVE A WILL?

It is wise to have a will, but some people need convincing as to its importance. Without a will there is no personal direction as to disposal of the person's estate after death. Whether possessions are few or many, most people have an idea regarding how they would like to dispose of them. For example, Mrs. Smith may want her daughter to have her jewellery. Without explicit directions in a will, no one really knows this. Practically speaking, where there is a will, less time and cost is involved. Intelligent planning avoids excess estate taxes and distributes the estate quickly and efficiently to the beneficiaries of your choice.

The Survivorship Act must also be considered. When two or more persons die in circumstances rendering it uncertain which survived the other, the younger is presumed to have survived the older. If the wife is younger and she is without a will, she has died intestate. For example, if the husband's property all goes to the wife's estate, it is added to her separate property and passes to her next of kin. This possibility can be eliminated with a common disaster clause, providing an alternate list of beneficiaries if the spouse does not survive by certain number of days (usually thirty).

WHO CAN MAKE A WILL?

Any mentally competent person eighteen years of age or older may make a will. Wills made by persons suffering from delusions affecting the nature, value or ownership of assets, or warping the natural affections, may not be recognized. Either fraud or undue influence may also render a will invalid.

A will may be revoked at any time, either by rescinding the old will, making a new one, or by deliberately destroying the old one. A person's will is normally revoked upon marriage, unless the will specifically states that it is being made in contemplation of that particular marriage. It may also lose its effectiveness, wholly or partially, by the death of persons named as beneficiaries or if the person, while living, disposes of property which had been mentioned in the will.

Wills are changed either by making a complete new will or by making a codicil (a document in the form of a will amending the original will).

Generally speaking, once made, a will should be reviewed every five years, or sooner if circumstances change.

WHO TO SEE ABOUT DRAWING UP YOUR WILL

The person best qualified to draw up your will is your lawyer. Legal fees for this service vary, depending upon the complexity of the will. You should discuss the matter of fees in advance with your lawyer.

Your lawyer, banker or executor will keep a copy of your will in his/her possession. It is important to advise immediate members of your family where the original will is located (preferably in a safety deposit box or other fireproof storage). One hidden under the mattress may not turn up for fifty years, in which event your estate will have been divided by *The Intestate Succession Act*, with no regard to your recorded wishes.

Another alternative is to have your will deposited with the Clerk of the Court of Alberta Attorney General. A person wishing to do so must enclose the will or codicil in a sealed envelope for delivery to the clerk of the court, either personally or by someone specially authorized, to deposit it on behalf of the testator (person making the will). The will or codicil may not be removed, copied or inspected during the person's lifetime except by the person or, in some cases, by a solicitor (upon order of a judge) acting under the written authority of the person who made the will.

For further information on the deposit of a will of a living person, contact:

Clerk of the Court
Law Courts Building
Edmonton, Alberta
T5J 0R2

Telephone: 427-7110

It is wise to keep a copy with your important papers, and to list on each copy where the original will is being held.

If moving to another province or country, check to see if the laws regarding wills are the same. For example, a holograph will is recognized in Alberta but not in all Canadian provinces.

WHAT ARE THE TYPES OF WILLS?

The ordinary form of will (called a solemn will) is signed at the end by the testator (maker) in the presence of two witnesses who must sign in the presence of the testator and each other. The witnesses must not be persons or spouses of persons who will receive anything under the terms of the will, and preferably should be younger and easily located.

Costly mistakes can be avoided if the will is executed in the lawyer's office. Beware of printed forms. Avoid amateur effort.

Another form of will recognized by Alberta courts is the holograph will. This is a will that is completely in the handwriting of the testator and needs no witnesses. Many other courts do not recognize a holograph will, so the person must be governed by the laws of jurisdiction in which the estate is situated. A holograph will is **NOT RECOMMENDED** except as a temporary measure.

Great care must be taken in wording a will to ensure that it has the legal effect intended, because when the time comes to give effect to it, the maker is not available to explain exactly what was meant. Remember, the will is to dispose of property acquired during the maker's entire lifetime.

Because of many legal problems involved, a will prepared by a person unfamiliar with the details of the laws relating to wills and the transmission of property, may be ineffective in disposing of the testator's property. For example, a provision that is of uncertain meaning or that may result in property being tied up for an indefinite period, may be invalid. In consequence, a will prepared by a person without full knowledge of the relevant laws is **DEFINITELY NOT RECOMMENDED**. A very high proportion of "home-made" wills cause unnecessary delay, uncertainty and expense.

HOW YOUR WILL DISPOSES OF YOUR PROPERTY

There are several ways to leave assets under a will, and Alberta law applies certain technical rules to the methods you choose.

The important consideration is to remember the alternatives available and the methods you have used in your will so that subsequent actions will not change the meaning or effect of the will.

For example:

- (1) Father 'A' wants to leave his land to son William, the only child interested in farming. In his will, he directs his executors to rent the land, pay the net income to his wife for her lifetime, and on her death to transfer the land to William. After the will is made, the land is expropriated for a factory site and on the death of Father 'A' there is no land, only a house in the city and cash in the bank.

Without a new will to meet the changing conditions, William gets no interest in the former farmlands and the widow may get nothing from the income direction unless the residuary clause benefits William and the widow.

- (2) My will provides, "I leave my grand piano to my daughter Katherine." This particular wording means that if I own a grand piano at death, my daughter Katherine will receive the grand piano. If I do not own a grand piano at death, Katherine receives nothing, no matter how talented she may be.

On the other hand, if my will reads, "I leave a grand piano to my daughter Katherine," then even if I did not own one at the date of my death, my executors would be obliged to buy a grand piano at the estate's expense and give it to my daughter Katherine.

- (3) I wish my son to attend university or agricultural college and to provide an incentive I state in my will, "If at my death or within (blank) number of years thereafter my son John attends a university in Alberta or an Alberta agricultural college, then I leave the sum of \$10,000.00 in trust to my executors to pay his tuition, board, lodging, books, etc., and upon graduation to pay the balance remaining to him for his own use absolutely (or to someone else if he dies or fails to graduate)." This is a valid and enforceable bequest.

However, if I foolishly refuse to take legal advice and draw my own will which merely says, "I leave the sum of \$10,000.00 to my son John, trusting that he will use this money to obtain a university degree or finish agricultural college

in Alberta and farm land, which his grandfather homesteaded, etc.," the Court would interpret this type of bequest as an absolute gift of \$10,000.00 to son John, with no strings attached, and he would not be obliged to attend university or agricultural college or graduate therefrom.

As these examples illustrate, technical rules of interpretation are necessary to determine unforeseen circumstances. Your lawyer, aware of these rules, can assist you in the proper wording and alternatives available to provide for the probable changes in your particular circumstances.

OWNERSHIP TRANSFER BY WILL

Transfer by will has certain disadvantages, especially when it is used to transfer the family farm or business on to the next generation. These are:

- (1) No one can predict when transfer by will is to take place. The result is a period of uncertainty regarding the transfer. This could extend to thirty or forty years.
- (2) A will can be changed by the maker at any time, providing he is still mentally competent, so it is not a definite financial arrangement until made final by death and legal action through the probate court.
- (3) Many times the parents making the will need money from the sale of the property to live on in their declining years, but they must alter the will to match their change of plans.
- (4) The legal cost, and often tax obligations for the estate, will be larger if the will is used to transfer all the property than if the farm is sold to the heirs.

WHAT HAPPENS WHEN A PERSON DIES WITHOUT A WILL?

For people failing to make a will, the provincial government has made a will for them. Unfortunately, it cannot take into consideration the needs of each particular family and some unfair situations may result.

This "will" is called *The Intestate Succession Act*, details of which may be found in that section.

EXECUTORS AND ADMINISTRATORS

An executor is appointed under a will and has the right to act immediately upon death. An administrator may only act when appointed by a court and this may take months. Delay is usually caused by many factors, such as who will be the administrator, what are the assets of the estate, posting of a bond, etc. An administrator is required where there is no legally enforceable will or the executor in a will is dead, incapable, or refuses to act. Careful thought should be given to selection of an executor of your estate, and the matter should be discussed with the person you intend to appoint as to whether s/he would agree to act as an executor. For example, it would not be wise to appoint an executor much older than yourself, in case such person should predecease you, with resulting complications. To avoid additional costs of administration, your executor should be located in Alberta. For more detailed information regarding the responsibilities of an executor or administrator, request a free copy of *A Guide to Probate Procedure* from the Alberta Women's Bureau.

The services of a trust company or the Public Trustee should be considered because, through their experience in estate planning, they can offer advice which could result in substantial tax savings, as well as avoidance of possible administrative problems. The fees payable to the executor or administrator are the same regardless of whether a trust company, the Public Trustee, or an individual is named.

Executors and administrators have three primary duties in handling an estate:

- (1) to gather all assets of the estate
- (2) to pay all legal debts, taxes and expenses of the estate
- (3) to pay out the balance of the estate in accordance with the terms of the will, or under provisions of *The Intestate Succession Act*, as the case may be.

They may enter into possession of the estate's property, bring legal action against debtors of the estate, enforce demands, give effective receipts and discharges, pay the testator's debts, and in effect perform all directions of the will or *The Intestate Succession Act*. The first step after receiving grant of probate or administration is that of filing income tax and completing succession duty returns, if any.

An executor may resign from his appointment providing he has taken no steps whatsoever in the affairs of the estate. This means providing he has not even made funeral arrangements. The executor does not have to post a bond if he lives in Alberta.

Since an administrator is appointed by the court, he must post a bond equal to twice the value of the estate. There is a priority of persons who may be selected by the court as an administrator. In order of importance they are: husband, wife, father, mother, child, brother, sister, uncle, aunt, nephew, niece, and other next-of-kin. This priority list is strictly adhered to by the courts, and applicants applying for a grant of administration of an estate must fulfil certain conditions if they wish to vary it. Where there is uncertainty as to the person entitled to a grant of administration, or undue delay exists, the court has power to grant administration to the Public Trustee or some other appropriate person.

THE PUBLIC TRUSTEE

The Public Trustee may, under statute;

- (a) where no person has been appointed, act as guardian or custodian of the estate of an infant
- (b) act in the administration of estates
- (c) act as custodian of property of missing persons, convicts and deceased persons
- (d) upon order of the court, act as judicial trustee of the estate of a deceased person
- (e) either alone or jointly with any other person or persons, accept and carry out a trust where he is appointed for that purpose
- (f) act as a guardian of the estate of an infant made a ward of the Province under the provisions of *The Child Welfare Act*

- (g) act in such other capacity and do such other acts as authorized or required to do by rules of court, order of a judge or the Lieutenant-Governor-in-Council, or by *The Public Trustee Act*
- (h) act as the committee of the estate of a mentally incompetent person.

He is a barrister and solicitor with at least ten years standing, responsible to Alberta Attorney General, and has offices in Edmonton and Calgary.

The Public Trustee is entitled to the same costs as are payable to counsel and solicitors, and to administration fees either as agreed upon by adult beneficiaries or as determined by the court upon notice to all beneficiaries concerned.

Many Albertans who have no relatives or principal beneficiaries resident in the province take advantage of the Public Trustee's professional skill and knowledge and appoint him executor of their will.

GUARDIANS

It is important to realize that there are two kinds of guardians. In Alberta we may, by will, appoint a guardian of the person of our minor children (under eighteen years of age). This guardian is the person you have selected, with his or her consent, to act as a substitute parent. Care should be given to seeing that the new environment will be as close to your present home as possible, in religion, discipline, health and education. Grandparents should not automatically be appointed as guardians. It may be advisable to allow them to retain the grandparent relationship with the children. Orphaned children will need their grandparents as well as substitute parents. The courts will approve the selection, as long as someone selected is not deemed by the court to be an unfit guardian.

Matters relating to the child's separate estate or inheritance are determined by the trustee named in the parents' will (if any), the Public Trustee, or a guardian of the infant's estate appointed by the District Court after posting a bond.

One of the most important reasons for making a will is to appoint guardians for your minor children. Some of the most heart-rending court cases on record are those where a number of relatives apply for guardianship of the person of the orphaned children. It divides the family (perhaps forever), upsets the children who have already been through a great deal, and costs the estate money through the court costs involved.

As well, under *The Dependent Adults Act*, the court may, upon application appoint either a plenary (absolute) or a partial guardian, for persons eighteen years of age or older if satisfied that the person is unable to care for himself, unable to make reasonable judgements about matters relating to his estate, and in need of a guardian.

Any person eighteen years of age or over, who consents to do so, is eligible to be a guardian of a dependent adult if the court is satisfied s/he will act in the best interests of the dependent adult, does not have conflicting interests with the dependent adult's interest, is of good character, and is a resident of Alberta.

The plenary guardian is empowered to decide where the dependent adult is to live and with whom, if and where s/he should work, the extent and nature of

social activities engaged in, the extent and nature of educational training, and the kind of health care required. The plenary guardian also has the authority to make decisions on such day-to-day matters as diet and dress. However, the power to administer the estate or finances of the dependent adult is not included. The partial guardian will only have control over some of the areas mentioned above.

Under *The Dependent Adults Act*, the guardian is bound to exercise power and authority in the best interests of the dependent adult and in such a way as to encourage independence in personal care and of making reasonable judgments in personal matters.

Matters relating to the estate and finances are determined by trustees. For children, the child's separate estate or inheritance is determined by the trustee named in the parents' will (if any), the Public Trustee, or a guardian of the infant's estate appointed by the Court of Queen's Bench after posting a bond.

For dependent adults, their estate is determined by the Public Trustee, or a trustee appointed by the Surrogate Court. A trust company may also be appointed.

The Intestate Succession Act

When a person dies without a will or leaves property that is not disposed of by a will, *The Intestate Succession Act* provides how the estate is to be distributed.

Effective January 1, 1976, if a person leaves an estate with a net value of less than \$40,000, the entire estate goes to the surviving spouse. Where the net value of the estate exceeds this amount, the surviving spouse receives \$40,000 plus interest at five per cent per annum until paid, and the remainder is divided:

- (1) if there is one child, half to the surviving spouse and half to the child
- (2) if there is more than one child, a third to the surviving spouse and two-thirds divided equally amongst the children.

If a son or daughter is dead but survived by children, they receive what would have been the parent's share. Where there are no children, the surviving spouse receives the entire estate.

Where there is no surviving spouse or descendants, the estate goes to the deceased's nearest kin, who are determined in the following order: parents (or the surviving one parent); brothers and sisters in equal shares (or if dead, their children will inherit their share); surviving nephews and nieces; grandparents; aunts and uncles; cousins.

Where no heirs survive the deceased person, the estate goes to the Crown in right of Alberta under *The Ultimate Heir Act*.

The Social Care Facilities Licensing Act

This Act is designed to require certain licenses to be obtained before persons can carry on the business of providing certain social care facilities. These facilities would include a place of care for persons who are aged or infirm or who require special care, an institution or shelter for children, a hostel or other establishment operated to provide accommodation and maintenance for unemployed or indigent persons. A contract nursing home under *The Nursing Homes Act*, a home or unit under *The Senior Citizens Housing Act* or an approved hospital under *The Hospitals Act* are included under *The Social Care Facilities Licensing Act*.

No person shall operate a social care facility providing accommodation or care for four or more persons unless a subsisting license issued by the Director under this Act, is held. In addition, inspectors are appointed to inspect the social care facilities. Applications for day care centres fall within the Day Care Regulations, which were made under this Act, to set up standards for day care facilities. Anyone wishing to set up or investigate a day care centre should refer to these regulations directly.

The Criminal Injuries Compensation Act

By this Act, the Province has set up a Crimes Compensation Board so that victims of crimes of violence may claim compensation. Claims may be made by:

- (1) anyone injured as a direct result of a crime of violence, or as a direct result of endeavouring to arrest someone, or preserving the peace, or in assisting a peace officer in carrying out duties with respect to law enforcement
- (2) the dependents of anyone who was killed as a direct result of any of the circumstances outlined in (1) above.

Anyone injured in Alberta may claim compensation. It should be noted that compensation for disfigurement and pain and suffering can only be awarded if the injuries occurred while the victim was aiding a police officer or preserving the peace. The maximum award for pain and suffering is \$10,000.00. Property damage is not covered by this Act.

The injury or death and how it was caused must have been reported to the police as soon as possible after it occurred. The claim for compensation must be registered within one year of the injury or death. The claimant for injuries must be prepared to have a further medical examination if the Board so requests. For full information contact:

The Crimes Compensation Board
9919 - 105 Street
Edmonton, Alberta
T5K 2E8

Telephone: 427-7217

The Debtors' Assistance Act

In 1943, *The Debtors' Assistance Act* established the Debtor's Assistance Board, which provides a counselling service for families with financial problems.

Services provided by the board include:

- (1) advice on family finance and budgeting
- (2) assistance in a proceeding in which maintenance or alimony payments are settled. (The Board must provide the Court, on its request, with a report as to the finances of the parties involved in this proceeding.)
- (3) information on the effects and consequences of garnishees, seizures or foreclosures
- (4) information on personal bankruptcy procedures
- (5) help with bringing debts together under the Orderly Payment of Debts provisions (see below)
- (6) advice as to the obligations which should or should not be included in the consolidation plan.

Part X of *The Bankruptcy Act* allows a debtor to consolidate certain debts and pay a set sum each month to the Clerk of the Court under a Consolidation Order. The creditors involved are paid in full.

The Bankruptcy Act

This federal statute defines the conditions and requirements of bankruptcy, which is a legal state and a process. It involves the applying of assets proportionately to the debts owed by the bankrupt with the objective of discharging each debt fully. It is different from insolvency, which is a state in which a debtor has insufficient assets to meet all the debts.

Alberta Consumer and Corporate Affairs offers counselling services which will help in debt-counselling or in drawing up a proposal to satisfy creditors over a longer period of time.

A creditor may institute bankruptcy proceedings by petitioning the Court. As well, a debtor can personally declare bankruptcy but this should be done only as a last resort because:

- (1) the bankrupt is still entitled to exempt the usual personal goods, tools of the trade, household goods, etc.
- (2) the process may result in a total discharge of the debt regardless of how much of a recovery is actually realized. (It is always at the discretion of the Court to look at the circumstances surrounding the bankruptcy to decide whether to grant a discharge.)
- (3) the bankruptcy proceeding may have a grave permanent effect on the business standing of a debtor.

The Securities Commission

The Securities Commission is an administrative body created by *The Securities Act* of Alberta, an act designed to regulate trading in stocks, bonds, shares, titles to property, and other documents which may fall under the broad category of "securities".

The Commission's functions include investigating any securities offences whether they are offences under the Act, or under *The Criminal Code*. It does not itself decide the guilt or innocence but rather prepares a report of its investigation for the Minister of Consumer and Corporate Affairs and for the Attorney General. The Securities Commission also acts as a registry office. All persons or companies wishing to trade in securities must be registered with the Commission as dealers or salesmen of registered dealers. The Act further requires corporations to file with the Commission statements of profit and loss, of surplus, of the source and application of funds, of changes in net assets, etc. The objective is to compel financial disclosure so that the public, when purchasing or selling securities, can make informed decisions as to their market value.

Failure to comply with these or any other requirements of the Act subjects the offender to possible prosecution and, on conviction, to a fine or imprisonment for up to one year.

For further information about the Commission contact:

The Securities Commission
1000 Capitol Square
10065 Jasper Avenue
Edmonton, Alberta
T5J 3B1

Telephone: 427-5201

The Landlord and Tenant Act

When renting an apartment or other accommodation, one is often required to sign a lease. This lease is a contract between the landlord and tenant and contains whatever provisions are agreed upon between them. Among other things, the lease should state the amount of rent, length of the lease, requirements for giving notice, the amount of the damage deposit and its conditions, and specified obligations of the landlord and tenant. Even if there is no written lease, the following rules govern residential tenancies in Alberta.

NOTICE

A written notice of termination of a monthly tenancy must be given by the landlord to the tenant not less than 90 days prior to the day on which it is specified to be effective. If planning on moving out, a tenant on a monthly tenancy must give notice to the landlord prior to the start of the tenancy month, to be effective on the last day of that tenancy month. Should a tenant commit a "substantial breach" as defined in *The Landlord and Tenant Act, 1978*, the notice required to evict a tenant may be reduced.

RENT INCREASES

Written notice of an increase in rent must be given by the landlord ninety days before the increase is to take effect. Rent increases are governed by the provisions of *The Rent Decontrol Act* which generally restricts increases in rental rates for residential premises to eight per cent or \$20.00 (whichever is greater) in 1979.

The initial rental rate charged for newly constructed residential premises is not subject to control.

Tenants who have questions about rent increases should contact the Rent Decontrol Appeal Board. Regional offices are located in Edmonton and Calgary.

DAMAGE DEPOSITS

There is a maximum limit of one month's rent that may be charged as a damage deposit. The landlord is required to pay interest at the rate of six per cent on damage deposits. The landlord must return the damage deposit or an estimate of the damages to the tenant within ten days after the tenant vacates. If there are deductions to be made from the deposit, the landlord must deliver a statement of account and return the final balance, if any, within thirty days after the tenant vacates.

To prevent disputes with the landlord upon vacating the premises, the tenant should make a list of everything that is damaged when moving in and have the landlord sign it.

ENTRY BY THE LANDLORD

The landlord may not enter rented residential premises unless the tenant is given a written notice of at least twenty-four hours before the time of entry. This notice should name a reasonable time of entry.

The following circumstances are exceptions:

- (1) The landlord may enter the premises if there is an emergency or the tenant has abandoned the premises.
- (2) During the last month of a monthly tenancy, the landlord may enter the premises at reasonable hours without consent, but with notice to the tenants, to show the premises to prospective tenants.
- (3) The landlord may enter if permission is given by the tenant at the time of entry.

LOCKS AND SECURITY DEVICES

A tenant may not add to or change locks on doors of the premises without the consent of the landlord. However, a landlord may do so if a key is made available to the tenant as soon as the addition or change is made. A tenant may, without consent of the landlord, install a security device that is capable of being used only while a person is inside the premises and that can be installed and removed without damage to the premises, or will remain in the premises and become the landlord's property when the tenant moves.

TENANCY AGREEMENT

A tenant who has signed and returned a written tenancy agreement to the landlord must be provided with a copy of the tenancy agreement within 21 days of its return to the landlord. A tenant may withhold payment of rent until a copy of this tenancy agreement is provided.

ABANDONED GOODS

Goods left on the premises by a tenant who has abandoned the premises, or vacated the premises on expiry or termination of the tenancy agreement, may be sold by a landlord who reasonably believes the goods have a total market value of less than \$300.00. Goods of value over \$300.00 may be sold by the landlord after storing them on behalf of the tenant for sixty days.

Money received by a landlord on the sale of a tenant's goods shall be paid to the Provincial Treasurer, after deducting the landlord's costs of storing and selling the goods. The Provincial Treasurer will retain the money on behalf of the tenant for one year, after which the tenant has no further claim.

IF PROBLEMS ARISE

If you experience problems in a landlord/tenant situation, find out if your city or town has a Landlord and Tenant Advisory Board. They may be able to give you the necessary assistance or guidance.

If you have problems getting your damage deposit back, get advice from the Small Claims Court.

Property Holding

A piece of property may be owned by one or more persons. Where more than one person owns the same property, they may own it as joint tenants or as tenants in common.

Joint tenancy is commonly used by married couples in owning their home. Each has an equal interest in the property and it cannot be sold or mortgaged without the consent of both owners. If one of the owners dies, then his/her share passes on to the other owner when proof of death is filed with the Land Titles Office. The owner of a share of land in a joint tenancy cannot dispose of it by will, unless the joint tenancy has been broken.

“Tenants in common” means that the owners have a share in the property. When one of the partners dies, the other partner does not automatically receive the deceased’s share. The share is inherited by the deceased’s next-of-kin, or goes to whoever is named in the will.

The Expropriation Act

As modern society grows more complex, the owner of property may find that a government requires all or part of the land for a public purpose. Where agreement cannot be reached, expropriation takes place. In 1974, Alberta passed *The Expropriation Act*, which provides procedures, protection and important rights to the property owner who is caught up in the expropriation process. The Alberta Land Compensation Board was created to settle compensation in such cases and to see that the owner is justly and fairly treated.

For further information, contact:

Alberta Land Compensation Board
#810, 500 Fourth Avenue S.W.
Calgary, Alberta
T2P 2V6

The Builders' Lien Act

The Act provides a special lien, not available at common-law, to parties who provide work or materials in respect of an improvement on land. This Act is of greatest benefit to contractors and sub-contractors in the construction field. If the owner fails to pay for work completed, it gives the prime contractor a 100% lien on the land that is improved. Sub-contractors or sub-suppliers are given a class lien securing 15% of the work done under the prime contract.

A lien is the right to hold the property of another as security for the performance of an obligation such as the payment of a debt.

The sub-contractor's lien is secured by a lien fund. This is created by the requirement, imposed on the owner, to hold back at least 15% of the money owed for the work done from time to time. If he holds back more than 15%, the lien fund is the total amount actually held back.

A prime contractor or a sub-contractor, to protect his interests, must register his lien at the Land Titles Office within 35 days of the date his work is completed. He is then required to commence the law suit on the lien within 180 days of registration. If these deadlines are not met, the prime contractor or sub-contractor will lose rights granted under the Act, and will be limited to the remedies at common-law.

Contracts

A contract may be made verbally (such as hiring a mechanic to repair your car) or in writing. A good contract leaves nothing in doubt, and contains all relevant information. It should be clear and concise and no clause should be vague. Lines should be drawn through any blank spaces on the written contract so that nothing can be added after the contract has been signed. If you are not in agreement with a point on the contract, a line should be drawn through the unwanted lines and the appropriate words substituted. You should also make sure that the other party to the contract initials the change. It is unwise to enter into a contract on a Sunday (see The Lord's Day Act).

For your own protection, all contracts should be in writing and should not be signed unless the contents, including the fine print, are fully understood. Before signing an important contract, it is wise to have it reviewed by a lawyer.

If any of the provisions of a contract are not met, you can be taken to court for "breach of contract" which could result in your having to pay damages.

The Lord's Day Act

This is a federal statute which can be altered by the provinces, and in some cases the municipal government, so the following does not necessarily apply to the center in which you live.

Entering into some contracts on Sunday (twelve o'clock midnight Saturday to twelve o'clock midnight Sunday) is illegal. You may write a cheque on Sunday as long as it is in conclusion of business begun during the week. The same holds true for the signing of contracts. To be safe, one should not sign any contract on a Sunday, as it is always possible for an unscrupulous business person to try to cancel it.

The Alberta Labour Act

The Alberta Labour Act has provisions for regulating such things as the number of hours worked, minimum wages, holiday pay, and the well-being of employees. The following are a few of the regulations to be found in this Act, but it should be noted that it does not cover all types of employment. Domestic servants, farm labourers and policemen are exempt.

HOURS OF WORK

Hours in excess of eight hours per day or forty-four hours per week constitute overtime. If the above hours are not practical to the employer, hours may be varied each week in a four-week time period, provided that there are no more than forty-eight hours in a work week, and a shift schedule is posted prior to each four-week period.

SHORT OR COMPRESSED WORK WEEK

An employer must apply for a permit to operate on a compressed work week (longer hours each day for fewer days). The majority of employees must be in favour of working a shortened week, and the employees' health and safety must not be in danger.

GENERAL HOLIDAY PAY

General holidays are those recognized holidays such as New year's Day, Good Friday, Easter Sunday, Christmas and Dominion Day. If an employee does not work on a general holiday, full wages must be paid unless s/he has been working for less than thirty days or is absent on a regular work day prior to and immediately after the holiday. If an employee works on a general holiday, regular wages must be paid for that day plus additional time and one-half.

DAY OF REST

An employer must allow his employees twenty-four consecutive hours of rest in each work week.

STATEMENT OF EARNINGS

An employer is required to keep records of employees' names, ages, addresses, hours of labor, wages paid, deductions, vacation periods and vacation pay and must furnish the employee with a formal statement of earnings and deductions.

FAILURE TO PAY WAGES

An employer failing to pay all wages and holiday pay may be charged under this act and, if found guilty, may be required to pay a fine, all court costs, and all the employee's rightful entitlements.

HOLIDAY PAY

Employees are entitled to two weeks' paid vacation after having worked for the employer for one year, or four per cent of regular earnings for any time less than a year.

REGULATIONS CONCERNING CHILDREN

- (1) Persons under fifteen years of age shall not be employed without the written consent of their parents or guardians AND the approval of the Board of Industrial Relations.
- (2) During normal school hours, no person shall employ or permit to work on the premises, anyone who is required to attend school.
- (3) The Lieutenant-Governor-in-Council may (in spite of No. 1):
 - (a) permit the employment of persons under fifteen years of age
 - (b) prohibit employment of persons fifteen to eighteen years of age in occupations likely to be injurious to life, health, education or morals
 - (c) establish conditions of employment of persons fifteen to eighteen years of age in any specific occupations.
- (4) Nos. 1 and 2 above do not apply to persons under fifteen years of age if:
 - (a) they have been excused from school attendance in order to obtain vocational training, or
 - (b) they are enrolled in a work experience program approved by the Minister of Education and the Board of Industrial Relations.
- (5) Persons twelve to fifteen years of age may be employed as delivery boys or girls for small wares of retail stores, or for flyers, newspapers or handbills, or as clerks or messengers in offices or retail stores. Hours of work are limited to two hours on school days and eight hours on days when school is out. Persons under fifteen years of age shall not be employed between 9:00 p.m. and 6:00 a.m. Persons fifteen to eighteen years of age shall not be employed between 12:01 a.m. and 6:00 a.m. unless they are working with, and under the supervision of, someone over eighteen years of age.

MATERNITY LEAVE

Pursuant to Board of Industrial Relations Order No. 71 (1976) governing maternity leave, effective January 1, 1977, an employee who is pregnant and who has been employed by her employer for a period of at least one year, is entitled to maternity leave without pay, consisting of:

- (1) a period not exceeding twelve weeks immediately preceding the estimated date of delivery or such shorter periods as the employee may request
- (2) the period, if any, between the estimated date of delivery and the actual date of delivery, and
- (3) a period not exceeding six weeks immediately following the actual date of delivery.

The pregnant employee must give her employer two weeks' notice in writing of the day upon which she intends to commence maternity leave, together with a medical certificate giving the estimated date of delivery. If the pregnancy of the employee interferes with the performance of her duties during the period of entitlement to maternity leave the employer may, by notice in writing, require her to commence maternity leave.

Where an employee is unable to return to work after the expiration of the six-week period following delivery, due to any medical conditions following the delivery, her employer shall grant her a further period of maternity leave without pay of not more than three weeks. A medical certificate to this effect must be given to the employer.

An employee wishing to resume employment upon expiration of maternity leave shall give her employer two weeks' notice in writing of the day on which she intends to return to work. Her employer shall reinstate her in the position occupied at the time her maternity leave commenced, or provide her with alternative work of a comparable nature, at not less than the same wages and benefits accrued on the date she commenced maternity leave.

This order does not apply to employers or employees if there is a custom, practice or agreement providing for maternity leave on conditions or with benefits which are more favorable to the employee than those contained in the order.

These matters are subject to change. For further information regarding provisions of *The Alberta Labour Act*, contact the Labour Standards Branch, Alberta Labour, at the location nearest to you. Offices are located in:

Calgary
Edmonton
Edson
Grande Prairie

Lethbridge
Medicine Hat
Red Deer
St. Paul

Consumer Affairs

The municipal, provincial and federal government all have a hand in consumer affairs; the difference between them is mainly jurisdictional.

Alberta Consumer and Corporate Affairs licenses trades, businesses and salespeople, operates the Debtors' Assistance Board, and handles consumer complaints, investigations and inquiries.

The Federal Department of Consumer and Corporate Affairs has jurisdiction over such things as hazardous products, weights and measures, packaging and labelling. It also handles consumer complaints and inquiries.

In addition to these departments, there are others dealing with problems in the consumer protection area. One example is the federal Health Protection Branch which is involved in programs aimed at protecting the public from health hazards in foods, drugs, cosmetics, etc.

For assistance with problems or inquiries, contact either the federal or provincial department of Consumer and Corporate Affairs. Both departments extend mutual co-operation and will direct your problem or inquiry to the correct source of information. Alberta Consumer and Corporate Affairs offices are located in:

Calgary
Edmonton
Fort McMurray

Lethbridge
Peace River
Red Deer

THE DIRECT SALES CANCELLATION ACT

A buyer who enters into a sales contract with a door-to-door sales representative may cancel the contract by giving a notice of cancellation:

- (1) not later than the fourth day after receiving the sales contract, whether it is received by personal delivery or by mail
- (2) not later than one year after the date on which the contract was received if:
 - (a) all the goods or services are not supplied within 120 days of signing the contract and if no dates for delivery or performance are stated in the contract
 - (b) the seller or sales representative was not licensed when the sale was solicited, negotiated and concluded.

A notice of cancellation is sufficient to withdraw or terminate the sales contract. It should be mailed or personally delivered to the seller or person named in the contract, or if no address is shown in the contract, to any sales representative or any known address of the seller. If the above are all unknown, notice of cancellation should be forwarded, along with a full explanation, to:

Alberta Consumer and Corporate Affairs
Post Office Box 1616
Edmonton, Alberta
T5J 2N9

THE MOTOR VEHICLE ACCIDENT CLAIMS ACT

This Act establishes a fund to satisfy claims for injuries arising from motor vehicle accidents which occur in Alberta. The claim may be for damages as a consequence of death, bodily injury or property damage exceeding \$100. The Act permits claims in circumstances such as hit-and-run where the driver causing the damage has left the scene and cannot be identified or located. It also provides a mechanism for plaintiffs who have obtained a judgment to receive payment from the fund, where the defendant has not satisfied the judgment.

In most cases the claims against the fund are handled through the fund office and the courts are not involved. If a court action occurs, the Administrator of the fund becomes the "defendant" in an action and the plaintiff assigns the right to sue the real defendant over to the Administrator. The latter may pursue a separate action against the real defendant if known. For further information contact:

The Motor Vehicle Accident Claims Fund
13th Floor, Century Place
9803 - 102A Avenue
Edmonton, Alberta
Telephone: 427-8255

THE ALBERTA INSURANCE ACT

This Act provides for compulsory payments to be made by the issuer to the beneficiaries where a motor vehicle accident results in death. Referred to as Section B benefits, death benefits, or no-fault benefits, these payments are the obligation of the insurance company regardless of the cause of the accident. The amounts involved are \$5,000 where the deceased was the head of the household or a spouse in a two-parent household, and between \$500 and \$1,500 where the deceased was a dependent relative.

Where the head of the household dies, the insurer must also pay \$1,000 for each surviving member of the family. Where there are two or more survivors, an additional one per cent per week of the total sum already payable, must be paid for the next two years.

Where the accident victim survives but is totally disabled the Act imposes an obligation on the insurer to pay the injured party 80% of her/his gross weekly earnings to a maximum of \$105 per week for a period of 104 weeks.

All of these benefits are no-fault benefits and are the responsibility of the insurance company regardless of the cause of the accident or the nature of the victim's policy.

THE FATAL ACCIDENTS ACT

This Act creates a statutory right in the executor or administrator of a deceased person, where death was caused by some wrongful act or neglect, to bring an action on behalf of the spouse, parent, child, brother or sister of the deceased. *The Fatal Accidents Act* creates not only a right to sue for damages regardless of loss, but sets a minimum quantity of damages (\$3,000) where the suit is on behalf of a spouse, parent or child.

Student Financial Assistance

There are several different kinds of assistance available to students, which are described below:

- (1) Scholarship — a cash award based on competitive standing
- (2) Prize — a small cash award for some specific achievement
- (3) Bursary — an award to a person in financial need, for a certain academic standing
- (4) Grant — money paid to a student who has a certain academic standing and who is in financial need
- (5) Loan — an amount of money provided to a student in need, to be paid back to the lender

If you are a resident of Alberta and want to continue with your education, but lack the funds to do so, you may be eligible for one or more of the above. Financial assistance is available to students attending universities, colleges, technical and vocational institutes, and occasionally funds are available to adult high school students, part-time students, apprentices, and those attending private schools.

For information regarding financial assistance available to students, write to:

Students' Finance Board
1100 Park Square
10001 Bellamy Hill Road
Edmonton, Alberta
T5J 3B6

Students' Finance Board
Sun Oil Building, 8th Floor
500 Fourth Avenue S.W.
Calgary, Alberta
T2P 2V6

The Ombudsman

By a 1967 Act, a Commissioner of the Alberta Legislature was appointed. This is the Ombudsman, who investigates complaints made by persons who feel they have suffered some injustice through administrative decisions and acts of officials in the Alberta government or its agencies. He also undertakes investigations on any matters he considers necessary.

Complaints must be made in writing. An investigation is carried out privately and the complainant is informed of the results. If remedial action is necessary, the Ombudsman may make a recommendation on your behalf to the department concerned, the Lieutenant-Governor-in-Council, or to the Legislature. All cases are reported annually to the Legislature.

The Ombudsman handles only matters relating to the Alberta government. He has no jurisdiction over matters involving the federal or municipal governments, private business or problems of a personal nature; nor can he intervene in the legal process of the courts.

If you wish to have a matter investigated by the Office of the Ombudsman contact:

1630 Phipps-McKinnon Building
10020 - 101 A Avenue
Edmonton, Alberta
T5J 3G2

Telephone: 427-2756

930 Three Calgary Place
355 Fourth Avenue S.W.
Calgary, Alberta
T2P 0J1

Telephone: 261-6185

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